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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re GEORGE D. KANUSE,
on Habeas Corpus.

A137436

(San Francisco County
Super. Ct. Writ No. 6572)

In 2011 the Board of Parole Hearings (Board) denied petitioner George D. Kanuse parole for the seventh time. In doing so, the Board primarily relied on Kanuse's lack of adequate insight into factors that led to the murder of the victim, June Pierre, and his failure to participate in and lack of commitment to substance abuse and other self help programming. Because there is no evidence to support the Board's conclusions regarding these factors, we direct the Board to vacate its decision denying parole and to conduct a new hearing consistent with the views expressed herein.

FACTUAL AND PROCEDURAL BACKGROUND

On December 21, 1982 Kanuse attended a holiday party given by his employer. Over the course of the evening he drank a six-pack of beer and 12 mixed drinks, smoked marijuana, and used cocaine. Kanuse invited his girlfriend, Pam Ramsdell, to accompany him to the party but she opted to attend with her cousin and another young man. After Ramsdell arrived at the party, Kanuse attempted to speak with her but she ignored him.

Petitioner briefly left the party on two occasions: once to smoke marijuana and once to escort a woman to her car when she left the party. Because the party was held in

a “shady” area in which Kanuse had been robbed, he retrieved his buck knife from his glove compartment and put it in his pocket prior to escorting the woman to her car.

Later, during the party, Kanuse saw Ramsdell speaking with two men. He approached Ramsdell, who was seated in a folding chair, and tried to speak with her. She ignored him. Kanuse put his hand on her shoulder and pulled her towards him. Ramsdell slid out of the folding chair and the chair collapsed. The men she had been speaking with restrained Kanuse until Ramsdell told them to let him go. Ramsdell and Kanuse then retreated to a corner of the room and Kanuse tried to speak with her; however, she seemed not to be really listening to him and she began to holler. Kanuse picked up a drink from a table and poured it over her head. As Kanuse was about to leave the party, Ramsdell approached him to talk but Kanuse walked away because he felt emotional about what he had done and ashamed of his behavior.

After he left the party Kanuse wanted to talk to Ramsdell that night in order to come to some kind of a “conclusion” about their relationship. Despite the late hour, he went to Ramsdell’s residence. Ramsdell lived with her aunt, June Pierre. Kanuse believed he had permission to enter Ramsdell’s residence and he gained entry by reaching into the locked door to unlatch it. After he entered the residence, Kanuse went to Ramsdell’s room, located on the downstairs level, but she was not there. He saw a light on in the upstairs kitchen, and thought Ramsdell might be there, so he went upstairs. As he climbed the stairway, Kanuse observed light coming from a room located off a hallway. He walked toward the lighted room and saw Pierre. At his parole suitability hearing Kanuse described Pierre as a “frail, elderly woman, not a threat to anyone.” At the time Kanuse encountered Pierre she was five foot-four inches tall, weighed 120 pounds and was in her late 50s.

Kanuse surprised Pierre and she told him to leave. Kanuse wanted to speak with Ramsdell, so he asked if he could stay and wait for her. After arguing with Pierre about whether he could stay, he turned to leave. As he did so, he heard a noise, and believing

that Pierre was opening a drawer to retrieve a weapon, he exploded in rage.¹ Kanuse stabbed Pierre approximately 43 times with his buck knife; eight of the individual stab wounds were later described as “potentially fatal.” Kanuse does not clearly remember the crime scene, but does recall that before he fled, Pierre stated, “I’m dead.” After stabbing Pierre, Kanuse went to a friend’s house and stayed there a couple hours before going home. The next day he threw the buck knife over the Bay Bridge.

Several days after Pierre’s murder, Kanuse was arrested by law enforcement officers and he confessed to the crime. He was subsequently charged with murder and convicted after a jury trial of second degree murder with the use of a deadly weapon. A psychological evaluation, attached to the October 1983 pre-sentence probation report, noted that Kanuse expressed guilt and remorse about the crime. Similarly, the probation officer who authored the 1983 report noted that Kanuse expressed “remorse for the murder.” On October 28, 1983 Kanuse was sentenced to 15 years to life for killing Pierre while under the influence of alcohol and drugs.

Kanuse appeared before the Board for his seventh parole hearing on July 27, 2011. At the conclusion of the hearing the Board denied his request for parole for three years. The Board supported its conclusion that Kanuse poses “an unreasonable risk of danger if released from prison” by citing: (1) Kanuse’s “insufficient insight into the causative factors” [of the crime]; (2) the “heinous, atrocious and cruel” nature of the crime; (3) Kanuse’s problematic social history — especially as evidenced by his romantic relationships and substance abuse; (4) his past and present attitude towards the crime, as shown by his blaming the victim; (5) his inconsistent statements — specifically denying past violent acts (despite the fact that earlier the evening he had poured a drink over Ramsdell’s head); and (6) his insufficient participation in beneficial self-help programming, in particular, his absence from Alcoholics or Narcotics Anonymous from 1997 through July 2010 and his statement to the 2009 Panel that he was not an alcoholic.

¹ Kanuse actually never saw Pierre with an actual weapon.

On October 29, 2012 the San Francisco Superior Court denied Kanuse's habeas petition challenging the Board's decision. Kanuse filed the instant petition in this court on December 28, 2012. After reviewing the informal briefing submitted by the parties, we issued an order to show cause on February 7, 2013. In compliance with this order, the Attorney General filed a timely return, and petitioner thereafter filed a traverse responding to the issues raised therein. We have reviewed the parties written pleadings, the record, and had the benefit of oral argument. For the reasons stated below, we now remand this case to the Board for further consideration, consistent with this opinion.

DISCUSSION

I. THE STANDARD FOR REVIEWING PAROLE SUITABILITY DECISIONS.

The standard pursuant to which the Board makes parole suitability decisions and our review of those decisions is well delineated. Briefly, the Board's authority is set out by statute and regulations. (See Penal Code § 3041; Cal. Code Regs. tit. 15 § 2402.) The Board will "normally" set a parole date for an eligible inmate, unless it determines that the inmate currently poses a threat to public safety. (Penal Code § 3041, subd. (a).) Thus, "parole is the rule, rather than the exception" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1204, quoting *In re Smith* (2003) 114 Cal.App.4th 343, 366); the Board must "justify denial of parole." (*In re Shaputis* (2011) 53 Cal.4th 192, 222.) In order to determine whether the petitioner poses a current threat to public safety, the Board conducts an "individualized inquiry" into the petitioner's suitability for parole, considering the entire record. (*Id.* at p. 219.)

Our review of the executive's parole decision is pursuant to the "highly deferential 'some evidence' standard." (*In re Shaputis, supra*, 53 Cal.4th at p. 221.) Although "highly deferential," our review is not toothless. (*Lawrence, supra*, 44 Cal.4th at p. 1210.) We do not reweigh evidence. (*Shaputis, supra*, at p. 220, fn. 7.) Rather, our review is to guarantee that the Board's "analysis of the public safety risk . . . is based on a modicum of evidence, not mere guesswork." (*Id.* at p. 219.) If the Board's analysis is not based on "some evidence" contained in the record, we must grant the habeas petition

and direct the Board to vacate its decision and to conduct a new suitability hearing consistent with this court's decision. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 658; *In re Prather* (2010) 50 Cal.4th 238, 244.)

II. PETITIONER'S LACK OF INSIGHT REGARDING FACTORS RELATED TO THE COMMISSION OF HIS LIFE CRIME

The Board relied on the commitment offense in denying parole, and specifically identified Petitioner's "insufficient insight into the causative factors [that led to his crime]" in support of its determination that Kanuse would pose an unreasonable risk to the public if released. The Board cited the following findings in support of its determination that Petitioner lacks insight: (1) notwithstanding his verbalizations to the contrary, Kanuse actually blamed the victim; (2) Kanuse's inconsistent statements about past violent acts, and (3) Kanuse's history of problematic romantic relationships. In order to resolve the issues raised in Petitioner's writ, we discuss each of the Board's findings more fully below.

A. Did Petitioner Minimize His Responsibility For the Murder By Blaming the Victim?

In denying Petitioner's request for Parole the Board determined that Kanuse "clearly place[s] blame on the victim" in stating that "the victim telling [him] to leave and allegedly reaching toward a drawer" caused him to become enraged and to stab the victim.

Our analysis of this issue begins and ends with the evidentiary record. At the 2011 Board suitability hearing Kanuse described for the Board the victim's conduct "going into a drawer." He noted that the victim's conduct triggered "rage" within him and he began to stab Pierre. Kanuse provided this description in response to the Presiding Commissioner's suggestion that Kanuse reported that he experienced "a tremendous amount of – Rage" at the time of the stabbing. Kanuse agreed with the Commissioner's account of his emotions at the time he stabbed the victim. Kanuse also testified that as a result of counseling he received while in prison, he was now able to identify the reason for his rage — his lack of self-awareness especially about anger, his lack of coping skills,

his substance abuse, and his poor relationship with his girlfriend — all leading to something he could not handle.

In addition, Petitioner adopted the Board's characterizations: that it was he who had invaded the sanctity of someone else's home; and that when he encountered the victim he had an unobstructed path to leave had he chosen to do so. He spontaneously stated that Pierre "was no threat to [him]" and he agreed that Pierre had always treated him courteously and kindly. Indeed, the Board commented on the degree to which Petitioner accepted responsibility for his crime in stating: "Certainly, there's no question about your willingness to take responsibility. You know, that's clear through all the documents that we reviewed and the statements that you've made this morning already."

Later, after discussing other aspects of the crime with Petitioner, the Deputy Commissioner returned to the concept of rage and asked Kanuse to define it. Kanuse was then asked "And what was it *on the part of the victim* that triggered that rage?" Kanuse responded, "I believe that it was her telling me to leave and going into the drawer." In response to the Commissioner's question, which focused on the victim's conduct, petitioner again described the events which preceded the stabbing. Significantly, Kanuse repeatedly stressed that he was solely responsible for the murder stating he was "distraught," and "[he] made every decision." And, when asked by the Deputy Commissioner whether Kanuse still claimed that he flew into a rage because the victim instructed him to leave and started to get something in a drawer, Kanuse stated, "That's [behaviorally] what got me to react that way. It seems, which it is — It's insignificant and petty for somebody to just do that and have me snap. But that was when I was at the brink."

Our review of the record reveals no evidence, let alone some evidence as required, to support the Board's finding that petitioner minimized his responsibility for Pierre's murder. Rather, Kanuse characterized the victim's actions, which preceded the stabbings, as trivial and insignificant which, solely because of his state of mind, resulted in his murdering her.

Moreover, we note that Kanuse's statements at the 2011 parole hearing were consistent with numerous past comments which fully reflect acceptance of responsibility for the commission of his crime. As noted in the factual summary, *ante*, as early as 1983, Kanuse expressed guilt and remorse for the murder. He clearly repeated that sentiment to the Board at the 2011 parole suitability hearing. Kanuse, in explaining why he committed the murder states:

My inability to recognize what was going on inside of myself, the anger that I didn't recognize that was welling up inside of me that I was trying to keep bottled up. I didn't have the ability to cope with that situation. And unfortunately, with me taking substances and poisoning my body, it impaired my judgment even further. And not being able to handle that situation properly just lets things get way worse for me. And I was prepared to handle my life at that time. Because I'd been doing this for a period of years, and the bad relationship that I had was a little unusual for me, because the nature of the relationship we had was a little, a little rough. It got me emotional in ways that I wasn't accustomed to. So this is something that I wasn't prepared for.

His 1989 psychiatric evaluation noted that "He takes responsibility for the instant offense and expresses remorse for his behavior." The following year the evaluating senior psychiatrist noted that Kanuse "has a great amount of guilt about the crime and feels that he should have been killed at the time as due punishment." In 1993 his psychiatric evaluation stated that "[h]e demonstrates considerable self-understanding and a positive attitude of personal responsibility" and that "[h]e appears to be truly motivated for change, as evidenced by adopting a self-critical attitude rather than being defensive." His 2008 psychological evaluation fleshed out the details of Kanuse's insight into the crime:

Mr. Kanuse appears to have developed good insight into the causative factors which led to his life crime. During the interview, he spoke about his superficial relationships with women, his state of intoxication, his overall mind-set and attitude of irresponsibility, his lack of goals in his life (not knowing what he wanted to do) and feeling ‘dazzled’ by the party lifestyle and how each of these issues contributed to the crime. During his period of incarceration, he has recognized his sexual issues with women as noted above, he has maintained a state of sobriety, he has developed a more responsible ‘mind-set,’ he has established goals (obtain maintain a job, spend time with family, etc.) and has realized that the lifestyle that dazzled him in the past only leads individuals to ‘crash and burn.’

His 2011 psychological evaluation, his most recent before his last suitability hearing, noted that he had “developed good insight and self-awareness into his personal characteristics (such as his tendency to focus on himself and his low self-confidence) as well as the causative factors which led up to his life crime.” He candidly discussed his past tendency to lie and his current efforts to be considerate, upbeat, positive, and genuine. Simply put, the record contains no evidence to support the Board’s finding that petitioner’s account of the murder blames the victim.

Nor do we find Kanuse’s description of the victim’s actions immediately preceding the murder implausible nor inconsistent with his previous statements expressing personal responsibility for his actions that night. (See *In re Hunter* (2012) 205 Cal.App.4th 1529, 1539 [where the petitioner’s version of events is not contradicted by the evidence or implausible, Board cannot find the petitioner’s story to be untrue].) Because there is no evidence to support the Board’s contention that Kanuse minimized his responsibility for his crime by blaming the victim, the Board’s conclusion that Kanuse lacks insight cannot be sustained on this ground.

B. *Kanuse’s Purported Inconsistent Statements Regarding Violence Fail to Support a Finding of Inadequate Insight.*

The Board also determined that Kanuse lacked insight based upon his denial that he had been violent towards Ramsdell in the past. In making this finding the Board cited Kanuse’s denial of past violence towards Ramsdell as inconsistent with his admission

that he poured a drink over her head at the party prior to Pierre's murder.² The record before us does not support the Board's conclusion. To the contrary, the record establishes that prior to the Board's colloquy with Kanuse regarding prior instances of violence between Kanuse and Ramsdell, Kanuse informed the panel that he poured a drink over Ramsdell's head at the party. Kanuse readily admitted that he assaulted Ramsdell with a drink in response to the Board's inquiry regarding the point at which his judgment became impaired during the murder. The panel then asked why he did that, referencing the drink incident, and Kanuse stated that when Ramsdell was yelling at him, he noticed a drink that happened to be on a table, and poured it over her. He characterized this as "a ridiculous thing to do," effectively ending their conversation when she left to clean herself up. An onlooker told him he was "blowing it," that his conduct was "ridiculous," and he agreed. On this record we are simply unable to discern the basis upon which the Board concluded that Kanuse provided inconsistent testimony regarding his involvement in, or acknowledgement of, prior acts of violence towards Ramsdell. (See *Hunter, supra*, 205 Cal.App.4th at p. 1542 [petitioner's failure to reference a particular fact which does not demonstrate a deficit in perception or understanding or rationally demonstrate current dangerousness is not evidence of unsuitability for parole].)

The Board also concluded that Kanuse had "insufficient insight" and would pose an unreasonable risk of danger to the public, based on his history of "problematic relationships, principally in the area of romantic relationships." The Board's inquiry during the 2011 hearing into the nature of Kanuse's past relationships with women is limited. In discussing Kanuse's 1991 psychological assessment, at the 2011 hearing the

² The Board also referenced Kanuse's earlier statement that he had armed himself with a knife when he escorted a woman from the party to her vehicle as an inconsistent statement. The violence which resulted from Kanuse's arming himself with his buck knife was Pierre's murder. There is nothing in the record involving the buck knife and violence directed towards Ramsdell and, thus, there is no inconsistency in Kanuse's statement concerning his retrieving the knife.

Deputy Commissioner challenges Kanuse's current understanding that the prior quality of his relationships with women contributed to his life crime. In 1991 Kanuse indicated that the crime would not have occurred had he not been abusing drugs and alcohol. At that time he also denied that the quality of his relationships with women contributed to his murdering Pierre. By 2008 there is evidence, however, that he accepted the contributing role that his relationships with women played in Pierre's murder. The 2008 psychological evaluation discusses Kanuse's promiscuous relationships with women and his three marriages and one relationship, while in prison, after divorcing his third wife. Kanuse discussed his involvement with multiple women and his use of sexual activity to escape his problems. Finally, he stated that his attitudes towards sexual relationships have become increasingly conservative. The examiner, noting that Kanuse has not engaged in inappropriate sexual activity while incarcerated, found that for various reasons — including his discussion of his relationships with women — he has developed “good insight into the causative factors which led to his life crime.”

At the 2011 hearing Kanuse clearly disavows his 1991 denial of the role that his relationships with women played and reaffirms his 2008 statements that his relationships with women ‘did play a role because of [his] attitudes that [he] brought with it. Although the Board is free to reject the psychological examiner's evaluation on this — and any other — point, to do so, it must have “some evidence” to support its contrary view. (See *Hunter, supra*, at pp. 1540-1541.) This record contains no such evidence.

III. THE RECORD FAILS TO SUPPORT THE BOARD'S CONCLUSION THAT KANUSE FAILED TO PARTICIPATE IN SELF-HELP AND SUBSTANCE ABUSE PROGRAMMING.

In denying parole the Board stated: “Today, the Panel is also concerned that you haven't sufficiently participated in beneficial self-help programming, and it does call into question your true commitment. Namely, from 1997 until July of 2010, there was some absence from this programming. Comments from the August 2009 Panel seem[] to be the basis upon which you returned to the program. And certainly, the commitment to AA or NA is going to be paramount to the Panel having the confidence that you would not

represent an unreasonable risk of danger to society, and that's principally associated with you describing alcohol and drugs being a central role or having a central role in the commitment offense.”

We are uncertain whether the Board based its denial, in part, on a perceived deficiency in Kanuse's participation in self-help programs generally or if the Board's concern was limited to substance abuse programs specifically. In any event, there is no basis to deny petitioner's request for parole on either ground.

Initially we find no evidence that Kanuse generally failed to participate in self-help programming. In 2009 the Board summarized Kanuse's programming as follows: “Mr. Kanuse has programmed in a commendable manner. He has continuously worked in various capacities. He's received numerous laudatory chronos from staff and supervisors with regards to his work. He has programmed in a commendable manner in self-help. He has taken many self-help and therapy courses. He's been involved in the IMPACT workshop. He's completed the Cat X program. He's taken stress management, relaxation, self-esteem, assertiveness training and substance abuse therapy. . . .” During the 2011 suitability hearing the Board recited evidence of Kanuse's continued positive programming. The Board noted: He had nearly completed his Associate's degree and was on the waiting list for the College Program at San Quentin. He earned certifications as a customer service specialist and sewing machine operator. He completed various workshops including Alternatives to Violence, Anger Management, and Stress Management. When he transferred to San Quentin he signed up for some 15 self-help groups. Thus, the evidence established that Kanuse actively participated in therapeutic programs for self-improvement.

We turn next to the Board's contention that Kanuse's participation in substance abuse programming was deficient, in that he was absent from such programs for a period of time. In support of this finding, the Board focused its attention on Kanuse's participation in Alcoholics Anonymous/Narcotics Anonymous (AA/NA). Indeed given the central role Kanuse's intoxication and multi-substance abuse played in his life crime,

the Board's concerns regarding substance abuse prevention is entirely reasonable. Kanuse abused alcohol, marijuana, and cocaine the night of the incident, and, more generally, his drug history includes his use of methamphetamines, LSD, Quaaludes, PCP, and barbiturates. Thus, we do not quarrel with the Board's detailed inquiry into Kanuse's sincere and continuing commitment to sobriety.

However, the evidence fails to support the Board's conclusion that petitioner was absent from substance abuse programming from 1997 to July 2010 in support of its denial of parole.

Kanuse's March 3, 2011 Comprehensive Risk Assessment for the Board of Parole Hearings summarizes his substance abuse rehabilitation efforts as follows: "While incarcerated, Mr. Kanuse participated in AA/NA from 1989 to 1997 serving as vice president in 1995 and 1996. He also completed a process oriented substance abuse group in 1988. He expressed insight into the fact that his parents' drinking likely made drinking 'more acceptable' in his mind. For many years he worked with the Rational Recovery program and communicated with the program's founders. This past September he returned to the AA program (after several months on a waiting list) in addition to the Rational Recovery program. Mr. Kanuse has abstained from substance use while in prison for approximately 28 years. He stated clearly that he intends to never drink alcohol or use drugs in the future and that he plans to participate in AA in the community as well as obtain a sponsor." The Board, however, focused on the period from 1997 through July 2010 when Kanuse stopped participating in AA/NA. In approximately September 2010 Kanuse returned to AA programming, after having been on a waiting list to do so.³

Kanuse testified during his 2011 suitability hearing concerning the reasons he ceased participation in AA. He informed the Board that in 1997 he left AA in order to

³ The record is unclear about whether Kanuse resumed his participation in AA in July or September 2010. That he resumed his participation in AA in this general timeframe is undisputed; for our purposes, the precise date is unimportant.

learn and apply the techniques of an alternative substance abuse program — Rational Recovery Systems. Kanuse purchased materials from Rational Recovery Systems, actively corresponded with the founder, and published articles in the organization's magazine about his experience using it to stop smoking and to remain sober.⁴

Thus, the evidence fails to support the Board's finding that there was a period during which Kanuse was absent from substance abuse programming. At most the record establishes that from 1997-2010 Kanuse did not participate in any 12-step program. However, during this time period he participated in the Rational Recovery program. While the Board may require participation in select alternative substance abuse programs, and recognize specific programs it values, the Board imposed no such requirement here. There is nothing in the record which demonstrates that Rational Recovery is not a viable, legitimate treatment approach for alcoholics and/or drug addicts. The Board cannot discount Kanuse's participation in Rational Recovery simply because it is not a 12-step program. Contrary to the Board's conclusion, the record reflects that Kanuse has consistently participated in substance abuse programming.

In addition to their finding that Kanuse had failed to participate in substance abuse programming for a significant period of time, the Board also relied upon a statement from his 2009 hearing wherein Kanuse denied that he was an addict. According to the Board, this statement demonstrated his "limited application of one of the key tenets of both NA and AA."

⁴ Based on a letter from the Rational Recovery Founder, Jack Trimpey, LCSW, Rational Recovery is an approach that can be used to abstain from alcohol and other drugs. Unlike the approach taken by Alcoholics Anonymous, which focuses on participants' powerlessness to control their desire for alcohol and the intercession of a higher power, Rational Recovery focuses on making a moral judgment about drinking, leading to an irrevocable commitment to lifetime sobriety. Kanuse reported that he found the "addictive voice recognition technique," advocated by Rational Recovery, to be useful to maintain his sobriety by allowing him to take responsibility, to be in control, and to rebuild his life, notwithstanding the "tug" of illicit substances.

As noted above, as a result of his participation in AA and Rational Recovery, Kanuse has been engaged in substance abuse programs employing different modalities to address his alcohol and drug problem. The 12-step approach famously encourages people to recognize their own powerlessness over their addiction, to believe in a power greater than themselves, and to surrender their lives to that power. Rational Recovery encourages individuals to recognize the addictive voice within themselves, but to take control of their personal decisions.

At the time of his 2009 suitability hearing Kanuse was an active member of the Rational Recovery substance abuse program. When asked at the 2009 suitability hearing whether he viewed himself as an addict, he responded that he did not consider himself an “alcoholic,” but a “serious problem drinker.” At the 2011 hearing Kanuse elaborated on his 2009 statement:

And it's been an ongoing process and it's been very difficult in some stages, like to admit that I'm an alcoholic and an addict. That's something that I had to do and just expose myself and say, yes, I am. I am that person. It's something that no one really wants to admit and I'm no different. But as an alcoholic and an addict, I recognize that this is something that I have to do if this is ever going to be something anyone can, myself included, can have any confidence in my recovery. I have to admit that I have a problem, that I am this person and I have to deal with it.

At the outset of the 2011 hearing the Board was informed that since July 2010 Kanuse participated in AA after spending time on a waiting list to re-enter the program. Kanuse was then asked to explain how he works the AA steps. He did so. Kanuse stated that if paroled he planned to participate in AA, including finding a sponsor. His 2011 psychological evaluation addressed petitioner's understanding how his being intoxicated contributed to his life crime in various ways: (1) in all probability, it increased the victim's discomfort with him when he entered her home; (2) it interfered with his judgment; (3) it clouded his perception; (4) it diminished his impulse control; and (5) it increased his overreaction to the victim. In addition, Kanuse acknowledged his

appreciation of the negative impact his chronic substance abuse has had in his social relationships, his work performance, loss of life-goals, and loss of moral compass.

Although at times Kanuse's characterizations of his substance abuse have ranged from "serious problem drinker" to "alcoholic," we discern no evidence from these descriptions to support the Board's finding that Kanuse's commitment to, or appreciation of the important tenets of substance abuse programming renders him a current threat to public safety if released on parole.⁵

A recent appellate court case, decided by our colleagues in the Sixth District Court of Appeal, supports our conclusion. In *In re Smith* (2003) 114 Cal.App.4th 343, 358, the Governor reversed the Board's grant of parole in part due to the Governor's finding that Smith required additional substance abuse counseling because of his history of having ingested a "staggering volume of drugs," suggesting that this type of sustained behavior was "deeply entrenched." (*Ibid.*) In view of Smith's having been "clean and sober for a substantial period of time relative to the duration of his abuse," the lack of evidence that he had done poorly in drug treatment, or that he had continued using drugs while incarcerated, the appellate court found that there was no support for the Governor's contention that Smith required additional in-prison counseling to demonstrate that he could maintain his sobriety if released. (*Id.* at p. 371.) An extensive past drug history by itself is not a valid reason to deny parole if the petitioner is sincerely committed to remaining abstinent, has demonstrated a significant period of abstinence, has successfully participated in substance abuse programming, and has a viable plan for maintaining his sobriety.

Although we do not reweigh evidence in reviewing the Board's decision, we do review the entire record in order to determine whether there is a modicum of evidence

⁵ Kanuse testified that he has not ingested alcohol since he entered prison, in 1983. The record indicates that he was disciplined for possession of inmate-manufactured alcohol in 1984, but he states that the alcohol was his cellmate's. Regardless, since 1984 through the date of his most recent parole hearing, July 27, 2011, there is no evidence that he abused drugs or alcohol.

supporting the existence of a rational nexus between the existing evidence and the ultimate determination of current dangerousness. (*In re Morganti* (2012) 204 Cal.App.4th 904, 917.) The record here establishes that since 1984 petitioner has abstained from the use of drugs, and has participated in substance abuse treatment since 1988. While petitioner has engaged in substance abuse programs which employ different therapeutic approaches, — AA and Rational Recovery — to understand and address the rudiments of his drug addition, the record before us establishes both his understanding of and commitment to substance abuse programming in order to maintain his sobriety. He has stated his intention to participate in AA if paroled. Although there is always a risk that a recovering alcoholic will relapse, that risk only justifies a parole denial if it is greater than the risk of relapse which is typical of recovering addicts. (*In re Morganti, supra*, 204 Cal.App.4th at p. 921.) Having thoroughly reviewed the record in this matter, we find no evidence to support the Board's conclusion that petitioner's involvement in substance abuse programming is deficient, much less that Kanuse will pose an unreasonable risk to public safety if granted parole.

CONCLUSION

The Board is required to articulate fact(s) probative of current dangerousness in light of the full record in denying release on parole. (*In re Prather, supra*, 50 Cal.4th at p. 255; *In re Lawrence, supra*, 44 Cal.4th at p. 1214.) Here it has failed to do so.

The Board's concerns regarding Kanuse's acceptance of responsibility, inconsistent statements concerning his past history of violence, and his commitment to self-improvement generally, and to remaining abstinent specifically notwithstanding, we find no evidentiary basis to support the Board's denial of parole here. Moreover, the Board failed to articulate any other factors which make the now, stale, historical factors, such as the commitment offense and unstable social history — evidenced by his prior substance abuse — predictive of current dangerousness. (See *In re Lawrence, supra*, 44 Cal.4th at pp. 1190-1191 [historical factor, such as the nature of the crime, is not "some

evidence” of current dangerousness absent something which suggests that that factor remains probative of whether the individual remains a continuing threat].)

Accordingly, the Board is directed to vacate its July 27, 2011 decision denying parole and to hold a new parole suitability hearing consistent with the views expressed herein, as soon as practicable.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.